

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ROYAL BEACH HOTEL, LLC AND
PHONG HO

PLAINTIFFS

V.

CIVIL ACTION NO. 1:06cv129-LTS-RHW

CROWLEY LINER SERVICES, INC. AND
UNDERWRITERS AT LLOYD'S LONDON

DEFENDANTS

ORDER

This matter is before the Court on Defendant Underwriters at Lloyd's London's [28] Motion for Summary Judgment or, In the Alternative, Motion for Reformation; and Plaintiffs' [37] Cross-Motion for Summary Judgment. It is gross understatement to describe the state of the record as far from ideal. Very little evidence is submitted for the Court's consideration; there are no supporting affidavits, opposing affidavits, depositions, answers to interrogatories, or admissions on file as contemplated by Fed. R. Civ. P. 56. Although the docket sheet shows that a great deal of discovery has occurred since the filing of the motions, no supplemental evidence has been offered in support of either of the cross-motions. An attempt by the Court to issue a Memorandum Opinion would be an exercise in rank speculation, and would resemble an answer to a hypothetical question on a law school exam. The record is so incomplete that the Court is not even certain of the precise damage to Plaintiffs' insured property; thus, it is unknown "what material facts exist without substantial controversy and what material facts are actually and in good faith controverted." Fed. R. Civ. P. 56(d). The Court is simply not in a position to identify, much less determine, the facts against which the policy of insurance is to be interpreted and applied.

Accordingly, **IT IS ORDERED:**

Defendant Underwriters at Lloyd's London's [28] Motion for Summary Judgment or, In the Alternative, Motion for Reformation is **DENIED**;

Plaintiffs' [37] Cross-Motion for Summary Judgment is **DENIED**;

Defendant Underwriters at Lloyd's London's [50] Motion for Leave to File Sur-rebuttal in Opposition to Plaintiffs' Rebuttal in Support of Plaintiffs' Cross-Motion for Summary Judgment is **DENIED**;

Defendant Underwriters at Lloyd's London's [28] Motion for Leave to Amend its Answer to include a claim seeking reformation of the subject insurance policy is **GRANTED**.

SO ORDERED this the 10th day of October, 2006.

s/ L. T. Senter, Jr.

L. T. Senter, Jr.
Senior Judge